

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

STEEP HILL LABORATORIES, INC, et al.,
Plaintiffs,
v.
DAVID HAROLD MOORE,
Defendant.

Case No. 18-cv-00373-LB

**ORDER GRANTING STAY OF
PROCEEDINGS PENDING APPEAL OF
ORDER DENYING ANTI-SLAPP
MOTION TO STRIKE**

Re: ECF No. 46

On March 8, 2018, the court issued an order that, among other things, denied defendant David Harold Moore's motion to strike the plaintiffs' complaint under the California "anti-SLAPP" law (California Code of Civil Procedure § 425.16). *Steep Hill Labs., Inc. v. Moore*, No. 18-cv-00373-LB, 2018 WL 1242182 (N.D. Cal. Mar. 8, 2018). Mr. Moore has filed an appeal to the Ninth Circuit. Mr. Moore then filed a motion in this court asking it to confirm that his appeal automatically stayed this case or, in the alternative, asking the court to stay this case.

A federal district court's denial of a California anti-SLAPP motion to strike is immediately appealable. *Hilton v. Hallmark Cards*, 599 F.3d 894, 900 (9th Cir. 2010). "Notice of an appeal of such an order divests the lower court of 'control over those aspects of the case involved in the appeal,' unless the lower court finds the appeal frivolous." *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, No. C 12-04634 SI, 2013 WL 3458215, at *1 (N.D. Cal. July 9, 2013) (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)). "However, the

1 standard for a frivolous appeal ‘is quite high,’ and frivolity should be found in cases where the
2 appeal is either ‘wholly without merit’ or the outcome is ‘obvious.’” *Id.* (quoting *Moser v. Encore*
3 *Capital Grp., Inc.*, No. 04CV2085-LAB (WMc), 2007 WL 1114113, at *3 (N.D. Cal. Mar. 27,
4 2007)). While the court obviously believes its ruling on Mr. Moore’s anti-SLAPP motion to strike
5 was correct, it cannot say that Mr. Moore’s appeal of that order is frivolous or wholly without
6 merit. The court must therefore stay the proceedings while Mr. Moore’s appeal is pending.

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8 **IT IS SO ORDERED.**

9 Dated: May 14, 2018



10 LAUREL BEELER
11 United States Magistrate Judge
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